

REMARKS

Claims 1-27 are pending of which claims 4 and 17 are amended and claim 27 is new. Applicants thank Examiners Smith and Wu for the telephonic interview of May 8, 2007. Applicants respectfully request entry of the amendments to claims 4 and 17, entry and consideration of new claim 27, and reconsideration of claims 1-26.

Statement of the Substance of the Interview

Pursuant to 37 C.F.R. §1.133(b), Applicants request that the following statement of the substance of the interview conducted on May 8, 2007 be made of record. In that telephone interview Examiners Ives Wu and Duane Smith discussed claims 1, 20, and 24 with Applicants' representative Robert Hayden.

Regarding claim 1, the Applicants specifically questioned whether Seeley et al. (US 20010032543 A1) taught a scrubber interface device as recited by the claim. In particular, Applicants questioned whether the portion of the container of Seeley et al. identified by Examiner Wu in the Office Action could properly be considered to be a "device" when the term is given its broadest reasonable interpretation consistent with the specification. No agreement was reached with respect to claim 1.

Regarding the rejection of claims 20 and 24 under 35 U.S.C. §112, second paragraph, Applicants discussed with the Examiners the arguments presented below. Examiner Smith indicated that in view of the arguments, the rejections would probably be withdrawn.

Objections to the Drawings

The drawings have been objected to under 37 C.F.R. §1.83(a) as failing to show top end 126 in FIG. 1 as described in the specification. Accordingly, paragraphs [0020] and [0028] have been amended to remove the occurrences of "126" from both paragraphs. Applicants request that the Examiner withdraw the objection to the drawings under 37 CFR 1.83(a).

Claim Rejections

Claims 20-25 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 1, 15, and 17-19 have been rejected under 35 U.S.C. §102(b) as being anticipated by Seeley et al. Claims 2, 3, 20, and 26 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Seeley et al., evidenced by Lane et al. (US 5,846,275).

Rejections under 35 U.S.C. §112, Second Paragraph

Claims 20-25 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Specifically, the Examiner has objected to the term “near” and apparently also to the term “condensation temperature.”

Turning first to the term “condensation temperature,” the Examiner states that “[i]t is well known in the art that condensation temperature depends on the pressure. One [of] ordinary skill in the art would not assume the pressure [sic] without knowing the operating pressure within the scrubber environment.” Office Action pages 2-3. Applicants believe that the Examiner is here arguing that the term “condensation temperature” renders the claim indefinite because the condensation temperature varies as a function of pressure, and the pressure within the scrubber environment is unknown.

Per MPEP 2173.02, “[i]n reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent.” The Examiner’s argument here appears to be that one of ordinary skill in the art could not be expected to know whether a method for delivering an effluent gas stream into a gas scrubbing system infringes claim 20 because the condensation temperature of the effluent gas is unknowable.

Applicants respectfully disagree. Certainly the pressure within a scrubber is either known, readily estimated, or measurable. Thus, the condensation temperature of an effluent gas within the scrubber can also be known or at least readily estimated. Thus, one of ordinary skill

in the art could determine the condensation temperature of an effluent gas and evaluate whether a method for delivering the effluent gas stream into a gas scrubbing system infringes claim 20.

Turning next to the term “near,” the Examiner stated that the term renders the claim indefinite. Office Action page 3. Per MPEP §2173.05, “[t]he fact that claim language, including terms of degree, may not be precise, does not automatically render the claim indefinite under 35 U.S.C. 112, second paragraph. *Seattle Box Co., v. Industrial Crating & Packing, Inc.*, 731 F.2d 818, 221 USPQ 568 (Fed. Cir. 1984). Acceptability of the claim language depends on whether one of ordinary skill in the art would understand what is claimed, in light of the specification.” Further, “[w]hen a term of degree is presented in a claim, first a determination is to be made as to whether the specification provides some standard for measuring that degree. If it does not, a determination is made as to whether one of ordinary skill in the art, in view of the prior art and the status of the art, would be nevertheless reasonably apprised of the scope of the invention.” MPEP §2173.02 also provides that “whenever possible, the examiner should make the record clear by providing explicit reasoning for making or withdrawing any rejection related to 35 U.S.C. 112, second paragraph.” Here, the Examiner has seemingly treated the term “near” as automatically rendering the claim indefinite without undertaking any determination of whether one of ordinary skill in the art would understand what is claimed, in light of the specification. The Examiner also has not provided explicit reasoning for why the use of the term “near” would prevent one of ordinary skill in the art, in view of the prior art and the status of the art, from being reasonably apprised of the scope of the invention. Accordingly, Applicants request that the Examiner withdraw the rejection of claims 20-25 under 35 U.S.C. 112, second paragraph.

Even if, *arguendo*, the term “near” renders claim 20 indefinite, Applicants contend that claim 24 limits “near the condensation temperature” to “above the condensation temperature” which certainly is definite under 35 U.S.C. 112, second paragraph.

In view of these arguments, and the telephonic interview of May 8, 2007, Applicants request that the Examiner withdraw the 35 U.S.C. §112, second paragraph, rejection of claims 20-25. Since claims 21-25 were only rejected under 35 U.S.C. §112, second paragraph, these claims should now define patentable subject matter.

Rejections under 35 U.S.C. §102(b)

Claims 1, 15, and 17-19 have been rejected under 35 U.S.C. §102(b) as being anticipated by Seeley et al. Claim 1 recites “a scrubber interface device.” MPEP §2111 provides that “[d]uring patent examination, the pending claims must be ‘given their broadest reasonable interpretation consistent with the specification.’ *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).” Giving a claim its broadest reasonable interpretation consistent with the specification means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). “[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) (en banc).

Here, Applicants focus on the word “device.” The ordinary meaning of “device” is “a thing made for a particular purpose; an invention or contrivance, esp. a mechanical or electrical one,” *Dictionary.com Unabridged (v 1.1)* (Based on the *Random House Unabridged Dictionary*, © *Random House, Inc.* 2006). This meaning is consistent with the specification. As can be seen from FIG. 1, the scrubber interface device 102 is a thing, and the thing is made for a particular purpose. By contrast, the Examiner suggested that the limitation of a scrubber interface device is met by a portion of the container of Seeley et al. “extending from the top of [the] container 1 to the heater 13.” Office Action page 3. In the telephonic interview, the Examiners suggested that the portion 12 of the sleeve 11 further defined the device.

Applicants contend, however, that reading the combination of the top of the container 1, the portion 12 of the sleeve 11, and the heater 13 to be a device gives the term “device” an unreasonably broad interpretation in view of the specification. Such an amalgam of proximately situated parts does not define “a thing made for a particular purpose.” While the heater 13 is a thing made for a particular purpose, the sleeve 11 is a thing made for a particular purpose, and the container 1 is a thing made for a particular purpose, the top of the container 1 is not a separable component, and neither is the portion 12 of the sleeve 11. Certainly, the top of the

container, the portion 12 of the sleeve 11, and the heater 13 do not form a thing, even though they collectively happen to define a particular volume within the container 1. Applicants therefore contend that Seeley et al. lacks a scrubber interface device and is therefore novel over Seeley et al. Accordingly, Applicants request that the Examiner withdraw the 35 U.S.C. §102(b) rejections of claim 1, and claims 15 and 17-19 depending therefrom.

Regarding certain dependent claims, even if the rejection of claim 1 is maintained, claim 17 has been amended to depend from claim 16 which was previously indicated as including allowable subject matter. Therefore, claim 17 also now defines patentable subject matter. Further, new claim 27 limits the scrubber interface device of claim 1 to include an insulated insert portion. Even if, *arguendo*, Seeley et al. is viewed as including a scrubber interface device, Seeley et al. does not teach or suggest that the scrubber interface device includes any insulation.

In view of the above, Applicants request that the Examiner withdraw the rejection of claims 1, 15, and 17-19 under 35 U.S.C. §102(b).1

Rejections under 35 U.S.C. §103(a)

Claims 2, 3, 20, and 26 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Seeley et al., evidenced by Lane et al.

Applicants assert that claims 2 and 3, depending from claim 1, are patentable over Seeley et al. for at least the reason that claim 1 is patentable over Seeley et al. As noted above, Seeley et al. does not teach a scrubber interface device. Further, it is Applicants position that there is no motivation in the prior art to add a scrubber interface device to the system of Seeley et al.

Regarding independent claim 26, Applicants believe that the Examiner intended to make the rejection under 35 U.S.C. §102(b) as the Examiner does not indicate which limitations of claim 26 are not taught by Seeley et al. Since claim 26 recites the limitation of “a scrubber interface device” as discussed above with respect to claim 1, Applicants contend that claim 26 is also both novel and nonobvious over Seeley et al.

Regarding independent claim 20, Applicants believe that the Examiner intended to also make the rejection under 35 U.S.C. §102(b) as the Examiner does not indicate which limitations of claim 20 are not taught by Seeley et al. Claim 20 recites a limitation of "providing the effluent gas stream to an interface device." As discussed above with respect to claim 1, Seeley et al. does not teach or suggest a scrubber interface device. Applicants therefore contend that Seeley et al. also does not teach or suggest providing the effluent gas stream to an interface device. Thus, claim 20 is also both novel and nonobvious over Seeley et al.

In view of the above, Applicants request that the Examiner withdraw the rejection of claims 2, 3, 20, and 26 under 35 U.S.C. §103(a).

All pending claims are allowable and Applicants therefore respectfully request a Notice of Allowance from the Examiner. Should the Examiner have questions, the Applicants' undersigned agent may be reached at the number provided.


Respectfully submitted,

Mark Johnsgard et al.

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By:


Robert Hayden, Reg. No. 42,645
Carr & Ferrell LLP
2200 Geng Road
Palo Alto, CA 94303
TEL: (650) 812-3465
FAX: (650) 812-3444